

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	281
Land:	Indien
Kilde:	Immigration and Refugee Board of Canada
Titel:	India: Reports of police and government authorities seizing passports of political dissidents or suspected terrorists to prevent their departure from India between 2010 and May 2016.
Udgivet:	13. maj 2016
Optaget på baggrundsmaterialet:	15. august 2016

[EN](#) | [DE](#)

- **Source:**
IRB - Immigration and Refugee Board of Canada
- **Title:**
India: Reports of police and government authorities seizing passports of political dissidents or suspected terrorists to prevent their departure from India (2010-May 2016) [IND105496.E]
- **Publication date:**
13 May 2016
- **ecoi.net summary:** Query response on report of police and government authorities seizing passports of political dissidents or suspected terrorists between 2010 and May 2016 (legislation; court rulings and passport seizures; recourse) [ID 325090]
- **Countries:**
India
- **Original link** <http://www.irb.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=456513&pls=1>

Recommended citation:

IRB - Immigration and Refugee Board of Canada: India: Reports of police and government authorities seizing passports of political dissidents or suspected terrorists to prevent their departure from India (2010-May 2016) [IND105496.E], 13 May 2016 (available at [ecoi.net](http://www.ecoi.net))
http://www.ecoi.net/local_link/325090/451304_en.html (accessed 22 June 2016)



Immigration and
Refugee Board of Canada

Commission de l'immigration
et du statut de réfugié du Canada

India: Reports of police and government authorities seizing passports of political dissidents or suspected terrorists to prevent their departure from India (2010-May 2016) [IND105496.E]

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Legislation

Section 10 of the *Passports Act, 1967*, titled "Variation, Impounding and Revocation of Passports and Travel Documents," provides that the passport authority or central government may impound or revoke passports as follows:

(3) [t]he passport authority may impound or cause to be impounded or revoke a passport or travel document,-

- a. if the passport authority is satisfied that the holder of the passport or travel document is in wrongful possession thereof;
- b. if the passport or travel document was obtained by the suppression of material information or on the basis of wrong information provided by the holder of the passport or travel document or any other person on his behalf;

[Provided that if the holder of such passport obtains another passport the passport authority shall also impound or cause to be impounded or revoke such other passport]

- c. if the passport authority deems it necessary so to do in the interests of the sovereignty and integrity of India, the security of India, friendly relations of India with any foreign country, or in the interests of the general public;
- d. if the holder of the passport or travel document has, at any time after the issue of the passport or travel document, been convicted by a court in India for any offence involving moral turpitude and sentenced in respect thereof to imprisonment for not less than two years;
- e. if proceedings in respect of an offence alleged to have been committed by the holder of the passport or travel document are pending before a criminal court in India[;]
- f. if any of the conditions of the passport or travel document has been contravened;
- g. if the holder of the passport or travel document has failed to comply with a notice under sub-section (1) requiring him to deliver up the same;
- h. if it is brought to the notice of the passport authority that a warrant or summons for the appearance, or a warrant for the arrest, of the holder of the passport or travel document

has been issued by a court under any law for the time being in force or if an order prohibiting the departure from India of the holder of the passport or other travel document has been made by any such court and the passport authority is satisfied that a warrant or summons has been so issued or an order has been so made. (India 1967, Sec. 10(3))

According to Section 14 of the *Passports Act* titled "Power of Search and Seizure,"

(1) [a]ny officer of customs empowered by a general or special order of the Central Government in this behalf and any [officer of police or emigration officer] not below the rank of a sub-inspector may search any place and seize any passport or travel document from any person against whom reasonable suspicion exists that he has committed any offence punishable under section 12 [Offences and penalties].

(2) The provisions of the [Code of Criminal Procedure, 1973 (2 of 1974)] relating to searches and seizures shall, so far as may be, apply to searches and seizures under this section. (ibid., Sec. 14)

1.1 Court Rulings on Passport Seizure

In 2008 the Supreme Court of India ruled that, while the police have a right to seize passports under Section 102 of the Code of Criminal Procedure (Cr.P.C.), they do not have the right to impound them, which can only be done by the passport authority based on Section 10(3) of the *Passports Act* (India 24 Jan. 2008, Sec. 13). The court described the difference between seizing and impounding in the following way:

[a] seizure is made at a particular moment when a person or authority takes into his possession some property which was earlier not in his possession. Thus, seizure is done at a particular moment of time. However, if after seizing of a property or document the said property or document is retained for some period of time, then such retention amounts to impounding of the property/or document. ...Thus, the word impounding really means retention of possession of a good or a document which has been seized." (ibid., Sec. 12).

According to the court,

...if the police seize[...] a passport (which it has power to do under Section 102 Cr.P.C.), thereafter the police must send it along with a letter to the passport authority clearly stating that the seized passport deserves to be impounded for one of the reasons mentioned in Section 10(3) of the [Passport] Act. (ibid. Sec 13).

[...]

In our opinion, even the Court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the Court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the Court to impound any document or thing other than a passport. This is because impounding a passport is provided for in Section 10(3) of the *Passports Act*. The *Passports Act* is a special law while the Cr.P.C. is a general law. It is well settled that the special law prevails over the general law....Hence, impounding of a passport cannot be done by the Court under Section 104 Cr.P.C. though it can impound any other document or thing. (ibid., Sec. 15)

In a telephone interview with the Research Directorate, a judge in Delhi who was formerly a practicing lawyer in the Supreme Court of India, stated that the police "have the authority to seize passports for a limited time under the ordinary criminal law" (Judge 26 Apr. 2016). the same source stated that upon seizing a passport,

the police [are] required to report the seizure forthwith to the Magistrate concerned, as per S.102 (3) of the Code of Criminal Procedure, 1973. As per judicial guidelines, the passport ought to be forwarded, thereafter to the Passport office for necessary action. The Regional Passport office can impound the passport for reasons as laid down under the *Passports Act*. The courts and police have no authority to impound the passport or retain it for a long period of time (ibid.).

A 2009 article by the *Times of India*, an English-language Indian daily newspaper, reports that, following the 2008 Supreme Court ruling, the home department of the state of Maharashtra took away the power to impound passports of suspects involved in criminal cases from the state police (*The Times of India* 26 Apr. 2009). According to the joint commissioner of police, quoted in the article, the police would still have a right to seize a passport from a suspect, but would need to refer the case to the passport authority if the police officer believed that the passport should be impounded (ibid.). Information on the length of time that police and passport authorities may hold a passport could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2. Reports of Police and Authorities Seizing Passports

According to sources, an anti-nuclear activist and the founder of the People's Movement Against Nuclear Energy (PMANE) had his passport impounded (*The Times of India* 17 Sept. 2014; *The Hindu* 1 Sept. 2012), in April 2012 by the Madurai Regional Passport Office (ibid.). According to Human Rights Watch, the activist was leading protests against the nuclear power plant in Kudankulam, in Tamil Nadu (23 Sept. 2014). An article by the India-based Indo-Asian News Service (IANS) quotes the activist as claiming that his passport was impounded "under the false pretext of facing several protest-related cases" due to his role in the anti-Kudankulam protests (IANS 15 June 2015). An article in the *Hindu* notes that,

[a] reliable source in the Regional Passport Office (Madurai) said the authorities had impounded [his] passport on the ground[s] that a case was pending against him and there was an arrest warrant too. The action was taken after issuing him a show-cause notice....All airport and immigration authorities had been informed of the action. (*The Hindu* 7 May 2013)

The activist, against whom the police registered "a case of unlawful assembly and other charges," challenged the 2012 order to impound his passport by approaching the Madurai High Court, which overturned the decision of the passport office (ibid.). The court ruled that the passport office did not have a right to impound the passport under Section 10(3)(e) of the *Passports Act* on the sole basis that the police had registered 98 charges against him, as, according to the court, "there [was] no reference to the court in which the cases [were] pending and the criminal cases [were] only in the stage of FIRs [1]" (ibid.). However, the article states, according to the passport office, because an arrest warrant was pending against the activist, "the authorities could impound his passport after serving show-cause notice" (ibid.). The IANS reports that in June 2015 the activist had not yet recovered his impounded passport, and had sent a letter to the Ministry of External Affairs requesting that it be returned to him "on humanitarian grounds" (15 June 2015).

Sources from January 2014 report that the regional passport office in Ranchi, Jharkhand state, impounded the passport of a human rights activist involved in work on indigenous peoples' rights in India (*The Times of India* 21 Jan. 2014; *The Hindu* 15 Jan. 2014). In an article in the *Hindu*, the activist stated that, in his opinion, the action was taken either as a retaliation for him refusing to pay bribes when he applied for his passport back in 2010, or as way "to harass [him] because of [his] activism" (*The Hindu* 15 Jan. 2014). *The Hindu* reports that, while the activist travelled to Germany and Thailand in October 2013 to speak at events on indigenous peoples' rights, he received a letter informing him that there was "an adverse police verification report" linked to his 2010 passport application and that he would have to "submit a fresh application" for a passport (ibid.). When he visited the passport office upon his return, his passport was impounded and he was asked if he "engaged in any anti-national activity" (ibid.). The article quotes a senior police officer as saying that "if an adverse report or case shows up in our files, then such a notice may be sent" (ibid.). According to the *Times of India*, the passport office acted on the recommendation of local police and impounded the passport after receiving "sensitive information" from the state police (*The Times of India* 21 Jan. 2014). The article alleges that the passport office has not provided for adequate recourse for the activist to defend himself (ibid.). Further information on this case could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

An article in the *Indian Express* reports that, among other things, the police seized the passport of "a suspected al-Qaeda terrorist" during his arrest in December 2015 in Cuttack (*The Indian Express* 16 Dec. 2015). Further and corroborating information on police or other authorities seizing passports of persons suspected of terrorism could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

2.1 Recourse

Section 11(1) of the *Passports Act* stipulates that "[a]ny person aggrieved by an order of the passport authority under ... sub-section (3) of Section 10 ... may prefer an appeal against that order to such authority (hereinafter referred to as the appellate authority) and within such period as may be prescribed" (India 1967, Sec. 11). According to the information available on the website of the passport authority, appeals of decisions made under the *Passports Act* may be lodged with the Chief Passport Officer, who is the head of the Central Passport Organisation and acts as the appellate authority under the Act (India n.d.b). In a 2013 interview with the eGov, a magazine devoted to e-governance (eGov, n.d.a), based in Noida, India (ibid., n.d.b), the Chief Passport Officer stated that "people whose passports have been seized by any agency" are "free to appeal" before him (eGov 5 Mar. 2013). Regarding an appeal based on seizure from another agency, the Chief Passport Officer explained that

[i]n such cases, people lodge a complaint, not against the RPO [Regional Passport Officer], but against some other agency. ...[T]he immigration [authorities], they are not empowered to keep the passport. If there is any doubt, the immigration authority will seize the passport and send it to the issuing authority. [For example,] [e]ven if the passport is issued from Trivandrum and it is held at

the Delhi airport, it will be sent to Trivandrum. The applicant will then ask the passport office at Trivandrum to make an application with requisite fees. Then those dossiers will be sent to the Chief Passport Officer. This may take some time. The RPO will send the application with a case history to us, and on receipt of the same we will slot a date for hearing. Under the Passport Act we have the power to register a...FIR and on conviction, the punishment can be up to two years and the penalty of Rs [rupees] 5,000 [approximately C\$97]. (ibid.)

The Chief Passport Officer added that a grievance can be lodged online, and that appeal cases against passports being seized by other agencies "can take a few months" before a decision is reached by his office (ibid.). Information on the passport authority's website states that grievances regarding passports can be registered through the passport portal website, by emailing the passport India helpdesk, through a government-wide grievance portal or by contacting the public grievance cell at the CPV by email, phone, or fax (India 10 Sept. 2014, 2-3). According to the Chief Passport Officer, the fee is 25 rupees [approximately C\$0.47] (eGov 5 Mar. 2013).

The judge stated that the possibility of internal appeal with the passport authority exists; however, he added that "most people" whose passports were seized or impounded would challenge such a decision in a high court (Judge 26 Apr. 2016). The judge gave the opinion that challenging the seizure through a high court is the "most effective way to challenge such decisions in India, as India has quite a robust court system and the access to justice in those cases is not difficult for ordinary citizens" (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response. Examples of cases whereby a high court overturned the police or courts seizure or impound of a passport include the following:

In 2013, the Madras High Court ordered a lower court to return a passport to a man who returned to India and was arrested on a warrant related to a criminal case and had his passport seized by police and retained (*The Hindu* 24 Jan. 2013). The High Court stated that the lower court did not have the authority to impound the passport without referring it to the Regional Passport Officer (ibid.). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

In 2015, the Karnataka High Court ruled that the police did not have the right to keep in its custody the passport it had seized from a person it accused of cheating and forgery, as this seizure can only be done by the passport authority (Daijiworld 21 July 2015). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

Sources report that high courts have also been rendering decisions in cases against the passport authority for withholding passports for an extended period of time (*Outlook* 26 Sept. 2014; Tamil Nadu 15 Sept. 2014). For example, in September 2014, the Madras High Court ordered the Regional Passport Officer (RPO) to return the passport to the accused in a domestic violence case, noting that "a period of nearly six months has passed from the date of seizure. Therefore, the respondents have no authority to continue to retain the passport ... since the contingency for invoking Section 10(3) [of the Act] has not yet arisen" (Tamil Nadu 15 Sept. 2014, para. 29, 35). Sources report that a special court presiding over a coal scam case in 2014 that involved the accused seeking the return of his impounded passport, declared that the passport authorities cannot delay in making decisions regarding impounding of passports (*Outlook* 26 Sept. 2014; *The Economic Times* 29 Jan. 2015). According to the court,

"[i]t is thus incumbent of all the passport authorities to lay down specific time-frame during which necessary action in any matter, be it impounding or release of passport or any other proceedings, are carried out by the concerned officers lest the public at large is made to run here and there or approach the courts of law (ibid.).

Further information on this case could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

Note

[1] According to a brochure by the Commonwealth Human Rights Initiative (CHRI), a New-Delhi based international non-governmental organization promoting human rights in the Commonwealth countries (CHRI n.d.), a First Information Report (FIR) is "a written document prepared by the police when they receive information about the commission of a cognizable offence. ...FIR is a very important document as it sets the

process of criminal justice in motion. It is only after the FIR is registered in the police station that the police takes up investigation of the case" (ibid.).

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